IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

OP.No. 13 of 1998(B)

PETITIONERS:

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1. **S.LALITHAMBIKA, TYPIST SELECTION GRADE, DIRECTORATE OF COIR DEVELOPMENT, INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM 695 033.**

2. **B.SETHURAJAN, TYPIST SELECTION GRADE, DIRECTORATE OF COIR DEVELOPMENT, INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM 695 033.**

3. **J.BALARJ, SENIOR GRADE TYPIST, DISTRICT INDUSTRIES CENTRE, WATER WORKS COMPOUND, THIRUVANANTHAPURAM 695 033.**

4. **V.RAJALEKSHMI, SENIOR GRADE TYPIST, DIRECTORATE OF INDUSTRIES & COMMERCE, VIKAS BHAVAN, THIRUVANANTHAPURAM 695 033.**

5. **M.LALITHA, UPPER DIVISION TYPIST, DISTRICT INDUSTRIES CENTRE, WATER WORKS COMPOUND, THIRUVANANTHAPURAM 695 033.**

BY ADV. SRI.B.RAGUNATHAN
SRI.G.GOPALAKRISHNA PILLAI
SRI.S.BALAN PILLAI

RESPONDENTS:

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1. **STATE OF KERALA, REP.BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT , THIRUVANANTHAPURAM 695 001.**

2. **DIRECTOR OF INDUSTRIES & COMMERCE, VIKAS BHAVAN, THIRUVANANTHAPURAM 695 033.**

OP. NO.13/1998.

3. **SENIOR ADMINISTRATIVE OFFICER DIRECTORATE OF INDUSTRIES & COMMERCE,**

VIKAS BHAVAN, THIRUVANANTHAPURAM 695 033.

4. SHRI.G.VENMONY,
FAIR COPY SUPERINTENDENT,
DIRECTORATE OF HANDLOOM & TEXTILES,
THIRUVANANTHAPURAM 695 033.

5. SMT.R.SANTHAMMA, FAIR COPY SUPERINTENDENT,
DIRECTORATE OF INDUSTRIES & COMMERCE,
THIRUVANANTHAPURAM 695 033.

6. SMT.S.JAMEELA BEEVI, SENIOR GRADE TYPIST,
DIRECTORATE OF INDUSTRIES & COMMERCE,
VIKAS BHAVAN , THIRUVANANTHAPURAM 695 033.

7. SMT.S.SAJITHAKUNJU,
SENIOR GRADE TYPIST,
DIRECTORATE OF COIR DEVELOPMENT,
THIRUVANANTHAPURAM 695 033.

ADDL.R8 IMPLEADED

R8:- K.VIMALA, SELECTION GRADE TYPIST,
DIRECTORATE OF COIR DEPARTMENT,
THIRUVANANTHAPURAM- 33.

IS IMPLEADED AS ADDL.R8 AS PER ORDER DT.28.1.98 IN CMP. 3183/1998.

BY ADV. SRI.S.M.PREM
SRI.Y.SEPONY
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SMT.K.P.SANTHI
SRI.P.RAMACHANDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NOS.13/98 IN CMP.8164/99 IN OP. 13/1998.

DISMISSED

6.3.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CIRCULAR DT.22.12.86 WITH REVISED SENIORITY LIST OF L.D.TYPISTS FOR THE PERIOD FROM 1.1.1970 TO 31.12.1981 ISSUED BY 2ND RESPONDENT

EXT.P2:- COPY OF THE LETTER DT.1`7.4.96 OF THE 2ND RESPONDENT ALONG WITH THE SENIORITY LIST OF L.D.TYPISTS.

EXT.P3:- COPY OF THE REPRESENTATION DT.22.5.96 OF 1ST PETITIONER TO 2ND RESPONDENT.

EXT.P4:- COPY OF THE REPRESENTATION DT.22.5.96 OF THE 2ND PETITIONER TO 2ND RESPONDENT.

EXT.P5:- COPY OF THE REPRESENTATION DT.20.11.96 OF THE 2ND PETITIONER TO 2ND RESPONDENT.

EXT.P6:- COPY OF THE REPRESENTATION DT.5.6.96 OF THE 3RD PETITIONER TO 2ND RESPONDENT.

EXT.P7:- COPY OF THE PROCEEDINGS DT.29.10.97 WITH FINAL SENIORITY LIST OF L.D.TYPISTS ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ORDER (i) DT.1.11.97 OF THE 3RD RESPONDENT.

EXT.P9:- COPY OF THE ORDER (ii) DT.1.11.97 OF THE 3RD RESPONDENT

EXT.P10:- COPY OF THE ORDER (iii) DTR.1.11.97 OF THE 3RD RESPONDENT.

EXT.P11:- COPY OF THE ORDER (iv) DT.1.11.97 ODF THE 3RD RESPONDENT.

EXT.P12:- COPY OF THE ORDER DT.12.11.97 OF THE 2ND RESPONDENT.

EXT.P13:- COPY OF THE ORDER DT.14.1.79 OF THE ADMINISTRATIVE OFFICER OF 2ND RESPONDENT.

EXT.P14:- COPY OF THE ORDER DT.24.11.86 OF THE ADMINISTRATIVE OFFICER OF 2ND RESPONDENT.

EXT.P15:- COPY OF THE ORDER DT.23.6.94 OF THE 2ND RESPONDENT.

EXT.P16:- COPY OF THE G.O.DT.1.4.76.

EXT.P17:- COPY OF THE G.O. DT.27.9.76.

EXT.P18:- COPY OF THE G.O. DT.3.12.91.

EXT.P19:- COPY OF THE CERTIFICATE OF SERVICE BY THE DEFENCE DEPARTMENT.

EXT.P20:- COPY OF THE JUDGMENT DT.24.3.97 IN WP NO.1310/97.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO.13 OF 1998

DATED THIS THE 6th DAY OF MARCH, 2007

JUDGMENT

The petitioners entered service of the Industries Department of the Government of Kerala as L.D. Typist on 30.12.75,17.9.76, 8.8.77,24.4.79 and 24.10.82 respectively. Petitioners 1 and 4 were recruited to the Malappuram District. Petitioner 2,3,and 5 were recruited to the Palakad District. All of them were transferred to the Head quarters at Thiruvananthapuram on 2.4.79, 6.3.81, 7.9.82, 25.4.84 and 8.6.87 respectively. Thereafter the petitioners 1 to 4 were promoted as U.D. Typist on 16.9.85 and 5th petitioner was promoted as U.D. Typist on 1.8.87. Therefore seniority among L.D. Typists were fixed originally on the basis of their date of joining duty/original effective date of advice in their parent district. On that basis a provisional seniority list was published on 16.11.82 for the period from 1.1.1970 to 31.12.1981. The final seniority list was published on 10.5.83 retaining the same seniority of the petitioners. Thereafter a final revised seniority list was published on 22.12.86, which is Ext.P1 in the original petition in which also the basis for reckoning seniority was the date of entry into service/effective date of

advise in the parent District.

2. However by Ext.P2 seniority list dated, 17.4.96 for the period from 1.10.76 to 31.12.94 the seniority position of the petitioners were changed, reckoning seniority on the basis of the date of transfer of the petitioners to the Headquarters at Thiruvananthapuram. To this provisional seniority list, petitioners filed Exts.P3 to P6 objections. Over ruling their objections, Ext.P7 final seniority list was published on 29.10.1997. Accordingly, revised promotion orders were also issued as per Exts.P8,P10 and P11. The review petition filed by the petitioners having been rejected by Ext.P12 order, the petitioners are challenging Exts.P2 and P7 to P12 and seeking a direction to the respondents 1 and 2 to restore the seniority of the petitioners in the cadre of L.D. Typist on the basis of their date of entry/effective date of advice to the post of L.D. Typist in the Parent District and to revise the promotions on the basis of such seniority.

3. The respondents have filed a counter affidavit. Their contention is that the transfer of the petitioners to the Headquarters at Thiruvananthapuram was in accordance with G.O. No.4/1961 and by Ext.P18 Government order dated 3.12.91, the Government had decided that in the case of inter-district transfer based on G.O. No.4/61, the seniority of such transferred persons should be regulated on the basis of the date of such transfer and not on the basis of the original date of joining in their parent district, as per

directions in Ext.P18 G.O. Dated 3.12.91. Accordingly, the Government Pleader, deriving support from the counter affidavit submits that impugned orders are not liable to be interfered with by this Court.

4. In answer to the counter affidavit, the petitioners would submit that since Ext.P1 seniority list became final as early as on 22.12.1986, ie., five years before Ext.P18 Government order came into force that settled seniority based on which the petitioners were confirmed in service by Ext.P15 order and were later promoted as U.D. Typist on 16.9.85 and 1.8.87 cannot be tinkered with, that too by a proceedings initiated in 1996. In this connection, they also relied on Ext.P20 judgment of a Division Bench of this Court in W.A.No.1310/97 rendered in more or less identical circumstances, although in a different department namely, the Registration Department.

5. I have considered the rival contentions in detail. The fact that a final revised seniority list of L.D. Typist from the period from 1.1.1970 to 31.12.81 was published on 22.12.86 by Ext.P1 is not in dispute. It cannot also be disputed that at that time, Ext.P18 Government Order dated, 3.12.91 had not even come into force. Therefore Ext.P1 seniority list became final and settled as early as on 22.12.86. Such a seniority list cannot be again revised, that too based on a subsequent G.O. dated 3.12.91 and on the basis of proceedings initiated still 5 years later on 17.4.96 (Ext.P2). At the

time of Ext.P1, final revised seniority list, the law obtaining was that inspite of their transfer as per G.O.No. 4/61, they would retain the seniority in their parent district which is evident from the fact that it is on that basis that Ext.P1 seniority list was finalised. The petitioners were confirmed on that basis and also they were given promotion as U.D. Typist much before the 1991 Government order came into force based on Ext.P1 seniority list. Therefore I have no doubt in mind that on the basis of subsequent Government Order in 1991 such a settled seniority list cannot be again revised, that too in 1996 still five years after 1991 G.O.

6. In this view I am also supported by Ext.P20 Division Bench decision in W.A.1310/97. Paragraph 6 of which reads thus:

> "We find from the facts that for the first time final seniority list was challenged before this Court in the year 1990. By the time, as we have already indicated, many of the petitioners got further promotion and they are holding higher post. If they are now reverted, we are of the view, considerable prejudice would be caused to them. If any person has got any grievance against the final seniority list which was published as early as in 1984 he would have approached this court at the appropriate time and not after a period of six years. There is nothing to show that aggrieved person had filed any review petition against the final seniority lists as well. Fact remaing that this court was moved only after a period of six years. We find that the Agricultural Income Tax and Sales Tax Department faced a similar situation as well. In that Department provisional seniority list of L.D. Typists appointed during the period from 1.1.1986 to 31.3.1993 was circulated among the staff through sub offices and objections were invited. Various objections were received. In the provisional seniority list seniority in respect of inter-district transferees was fixed

> with effect from the date of joining in the now district as per G.O.(P)No.36/91/P&ARD 2.12.1991. Some of the L.D. Typists had made request to re-examine the issue. Same was accordingly re-examined and the Board had decided that their seniority would be governed by G.O.(P)No.36/91P&ARD dated 2.12.1991. In other words, it was decided not to disturb the position of inter-district transferees who were already promoted prior to the said date. We are of the view that the same principle could be applied in this department as well. This is a case where inter-district transfers were effected before 1984 and they were all included in the final seniority list of L.D. Clerks giving seniority from the date on which they joined duty in the parent district. We are of the view at this distance of time there is no justification in disturbing the said situation. In such circumstances we hold that the direction given by first and second respondents to revise the final seniority list published vide office General Memorandum No.E4-34154/84 dated 7.11.1984 is illegal. Promotions already given to the petitioners on the basis of the said list be not disturbed and G.O.(MS)4/61/PD dated 2.1.1961 and the proviso to General Rule 27 of the Kerala State and Subordinate Services Rules would apply only prospectively without unsettling the rank and position of the petitioners. It is so declared and Ext.P7 order would stand quashed. Rights of the parties will be regulated accordingly. Judgment of the learned single Judge will stand set aside. All the writ appeal and original petitions are disposed of as above."

7. The facts of that case are almost identical to that of the present case and therefore the ratio of that decision squarely applies to the present case. In the said circumstances, I am of opinion that the petitioners are entitled to succeed in this original petition. Accordingly, Exts.P2 and P7 to P12 are quashed. It is declared that for all service benefits, the petitioners would be governed by Ext.P1 seniority list. Promotions revised on the basis of Ext.P7 seniority list

dated 29.10.97 shall be revised accordingly and revised orders shall be passed regulating all subsequent promotions of the petitioners on the basis of their seniority as per Ext.P1 seniority list.

8. it is represented by the learned counsel for the petitioners that the petitioners 2 and 4 have already retired from service. I make it clear that in respect of the petitioners 2 and 4, their service benefits and retirement benefits shall be re-computed on the basis of the revised orders regarding their revised promotions on the basis of this judgment.

Original petition is allowed as above.

S. SIRI JAGAN, JUDGE

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